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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/533,342	03/23/2000	Colin D. Nayler	E0871	9949
45305	7590	06/14/2006		
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			EXAMINER	
			KUMAR, PANKAJ	
			ART UNIT	PAPER NUMBER
			2611	

DATE MAILED: 06/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/533,342

Applicant(s)

NAYLER, COLIN D.

Examiner

Pankaj Kumar

Art Unit

2611

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 31 May 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 1-20.

Claim(s) objected to: 23 and 24.

Claim(s) rejected: 21 and 22.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. ☐ Other: _____.

Pankaj Kumar

Art Unit: 2611

Applicant argues that HDTV only has one modulation. This is not persuasive.

<http://www.8vsb.com/HDTV-modulation.html> discusses a number of different modulations for HDTV including 32 QAM, 16 QAM, SS QAM, 2 and 4 level VSB, also 8 VSB.

Applicant argues that Kim teaches away from combining with Tzukerman since Kim selects gain based on a detected segment synchronization signal loaded on the HDTV signal while Tzukerman select gain based on the modulation of the HDTV signal where there is only one modulation and thus the combination of Kim with Tzukerman would not be purposeful for Kim. This is not persuasive for a number of reasons. First, HDTV has multiple modulations. Second, it would be purposeful for Kim since Kim suggests selecting the gain (Kim fig. 3: 230) (something broad) in general and Tzukerman suggests the beneficial use of selecting the gain based on the modulation such as maintaining average constant power level (Tzukerman col. 2 lines 36-38) because different modulations have different powers (Tzukerman col. 2 lines: 32-34) in the analogous art of amplifying. Third, as applicant suggests that Kim looks at the synchronization signal to determine gain, Kim can still look at the synchronization signal to determine gain and when combined with Tzukerman, the combination can also consider Tzukerman's advantage of determining gain based on modulation to maintain average constant power level. Hence Kim teaches towards combining with Tzukerman.

Applicant argues that always the same gain would be selected since HDTV only has one modulation. This is not persuasive since HDTV has multiple modulations.

Art Unit: 2611

Applicant argues that examiner proposed a modification. This is not persuasive since examiner did not propose a modification. The office merely provided a motivation to combine the references.

Applicant argues that Kim would need to be modified to no longer look at the synchronization signal if Kim is combined with Tzukerman. This is not persuasive since applicant has not provided any reasoning for such. Kim when combined with Tzukerman can still look at synchronization signal.

Applicant argues that modifying Kim to select gain based on modulation technique rather than whether a segment synchronizing signal is correctly detected would defeat the primary purpose of Kim. This is not persuasive. The modification of Kim to select gain based on modulation technique can be used in conjunction with Kim selecting gain based on whether a segment synchronizing signal is correctly detected. For example, if Kim can realize that the received signal is a 32 QAM signal, then it would select a gain from one of the high gain levels and based on whether the signal was correctly received, it could adjust the gain again to one of the higher set of gains. If Kim can realize that the received signal is a 16 QAM signal, then a lower amount of gain can be used to conserve power and based on whether the signal was correctly received, it could adjust the gain again to one of the lower set of gains.

Applicant's arguments are trying to bodily incorporate one reference into another reference.

Although it can be bodily incorporated in this case as explained, the test for obviousness is not

Art Unit: 2611

whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).